



Northern California Airspace Users Working Group

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U.S. Aeronautics Program (MS40) ☐ California Department of Transportation, P.O. Box 942873 ☐ Sacramento, California 94273-0001

Member Groups

Aircraft Pilots of the Bay Area
Air Transport Association
Airline Pilots Association
Allied Pilots Association
American Airlines
Air National Guard
Aircraft Owners & Pilots Association
Aris Helicopters
California Pilots Association
Caltrans
Civil Air Patrol
Experimental Aircraft Association
Hamilton Reuse Committee
Hayward Air Terminal
Metropolitan Transportation Commission
Napa Valley Balloons
NASA Ames Research Center
National Air Traffic Controllers Association
National Business Aircraft Association
Naval Air Station Alameda
Naval Air Station Moffett Field
Pacific Gas & Electric
Pacific Soaring Council
Palo Alto Airport
Port of Oakland
Salinas Municipal Airport
San Francisco International Airport
San Jose International Airport
San Jose Jet Center
Sheriff's Air Squadron
Sierra Academy of Aeronautics
Soaring Society of America
Travis Air Force Base
United Airlines
U.S. Air
U.S. Air Force
U.S. Navy

Technical Support

Federal Aviation Administration
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Institute of Technical Studies

October 28, 1997

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Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington D.C. 20554

MM Docket No. 97-182 Notice of Proposed Rule Making FCC 97-269

Preemption of State and Local Zoning and Land Use Restrictions on Siting, Placement and Construction of Broadcast Station Transmission Facilities

The Northern California Airspace Users Working Group (NCAUWG) is composed of experienced users of airspace that represent a relatively broad listing of organizations. Most of our members are pilots who fly aircraft of various types ranging from small sailplanes to the largest aircraft flown by the military and air carrier fleets. Our members have a direct interest in the use of the National Airspace. We are particularly concerned about the safe and efficient use of airspace over Northern California, but our comments in this case apply equally to the entire United States.

The NCAUWG strongly opposes any attempt by the Federal Communications Commission (FCC) to issue regulations that ride roughshod over, or preempt, state and local zoning laws, ordinances and regulations that include consideration of the safe use of airspace. The preemption of the control of land use by local governments, as proposed in the Notice of Proposed Rule Making (NPRM), is totally inconsistent with safety of flight as well as being inconsistent with the concept of "local control" over local matters. Aircraft and their passengers are already exposed to the risks inherent in having to avoid radio and television towers and other existing man-made obstructions. Preemption of land use control by the FCC would increase the existing degree of risk. The Federal Aviation Administration (FAA) cannot enforce safety oriented land use standards at the local level. That function is relegated to local government. Preemption of local government by the FCC would prevent implementation or enforcement of safety standards by anyone. The subject NPRM poses an unacceptable reduction in safety upon the general public that cannot be overlooked. The attitude of the proponent of this NPRM appears to be that the new digital television (DTV) system has higher priority than anything else, including public safety.

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In several cases in California, instrument approaches for airports have higher than otherwise necessary minimum altitudes due to obstructions on the surface near the airport. The weather minimums that must be observed by pilots (because of obstructions such as television towers) make some airports unavailable for use during inclement weather. The cause of the temporary closure of the airports is often the controlling obstruction (tower), not the weather. It would be safe to fly low enough to break out of the clouds if the obstruction were not there to create the need for a higher minimum altitude for the instrument approach. There are also several airports in California for which delays are encountered that would not occur if there were no obstructions near the airport. Television towers and their associated guy wires can be serious hazards to aviation, depending on their locations. They cause considerable delay and inconvenience in addition to reducing flight safety. The proposed preemption of local government's authority to control land uses, including consideration of safety issues, is not appropriate.

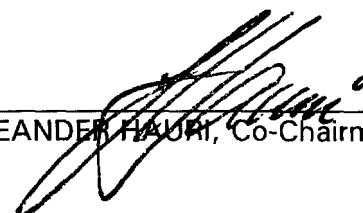
It is noted in paragraphs 19 and 20 of your request for comments that you are requesting statements showing delays encountered by broadcasters and tower owners where laws, ordinances or procedures may impede adherence to the accelerated DTV broadcast system build-out schedule. It is also noted that you have not asked for statements indicating the delay and inconvenience that the general public will be asked to bear because the towers are constructed. Your question indicates a bias in favor of developing the information necessary for promoting the preemptive action included in the proposal. You should seek information regarding delays from all sides of the public.

The time limits listed under the Siting Procedures for broadcast towers allow 21 days, 30 days, or 45 days for modification of an existing tower, relocation within 300 feet of an existing tower, and all other proposals respectively. This is not enough time for local governments to inform themselves of the request and formulate the information necessary to make a well informed decision. This incredibly short period of time creates another bias in favor of pushing the proposals through local government regardless of whether the site is acceptable. The time limits should be approximately three times as long as the limits currently provide.

In summation, the need to rapidly implement the DTV broadcast system does not justify preemption of local government's authority to govern the issues that affect public safety such as the siting and construction of additional television towers. **The petition proposed by the National Association of Broadcasters and the Association for Maximum Service Television is totally self-serving and it reduces safety to the general public. It should not be adopted.**

Sincerely,


WALTER F. RAMSEUR, Co-Chairman


LEANDER HAUERT, Co-Chairman